

Internal Revenue Service, Treasury

§ 301.6223(e)-2

indirect partners holding an interest in the partnership through the pass-thru partner. However, this rule does not apply if the indirect partner—

(i) Receives notice from the Internal Revenue Service;

(ii) Is identified as provided in section 6223(c)(3) and § 301.6223(c)-1 at least 30 days before the notice is mailed to the tax matters partner; or

(iii) Is a member of a notice group entitled to notice under paragraph (a) of this section.

(2) *Examples.* The provisions of paragraph (b)(1) of this section may be illustrated by the following examples:

Example 1. Partnership ABC has as one of its partners, A, a partnership with three partners, X, Y, and Z. ABC does not have more than 100 partners, and partnership A is entitled to notice under section 6223(a). In addition, Z was identified as provided in section 6223(c)(3) and § 301.6223(c)-1 on May 1, 2002. The Internal Revenue Service mailed a notice to the tax matters partner of ABC on July 1, 2002, but failed to provide notice to partnership A. Notwithstanding the Internal Revenue Service's notice to the tax matters partner, the Internal Revenue Service is deemed to have failed to provide notice to X and Y. The Internal Revenue Service's failure to provide notice to A, however, has no effect on Z; whether notice was provided to Z is determined independently.

Example 2. Assume the same facts as in *Example 1*, except that the Internal Revenue Service provided notice to partnership A but did not provide separate notice to Z. Notwithstanding the Internal Revenue Service's notice to partnership A, the Internal Revenue Service is deemed to have failed to provide notice to Z.

Example 3. Assume the same facts as in *Example 1*, except that partnership ABC has more than 100 partners and partnership A is entitled to notice under section 6223(b) because it had at least a 1 percent profits interest in partnership ABC. In addition, X became a member of a notice group on June 1, 2002, and the Internal Revenue Service mailed a notice to the designated member of that notice group. The Internal Revenue Service also mailed a separate notice to Z. The Internal Revenue Service's failure to provide notice to partnership A only affects Y, who is deemed not to have been provided notice by the Internal Revenue Service.

(c) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4,

2001, see § 301.6223(e)-1T contained in 26 CFR part 1, revised April 1, 2001.

[T.D. 8965, 66 FR 50549, Oct. 4, 2001]

§ 301.6223(e)-2 Elections if Internal Revenue Service fails to provide timely notice.

(a) *In general.* This section applies in any case in which the Internal Revenue Service fails to timely mail any notice described in section 6223(a) of the Internal Revenue Code to a partner entitled to such notice within the period specified in section 6223(d). The failure to issue any notice within the period specified in section 6223(d) does not invalidate the notice of the beginning of an administrative proceeding or final partnership administrative adjustment (FPAA). An untimely FPAA enables the recipient of the untimely notice to make the elections described in paragraphs (b), (c), and (d) of this section. The period within which to make the elections described in paragraphs (b), (c), and (d) of this section commences with the mailing of an FPAA to the partner. In the absence of an election, paragraphs (b) and (c) of this section provide for the treatment of a partner's partnership items.

(b) *Proceeding finished.* If at the time the Internal Revenue Service mails the partner an FPAA—

(1) The period within which a petition for review of the FPAA under section 6226 may be filed has expired and no petition has been filed; or

(2) The decision of a court in an action begun by such a petition has become final, the partner may elect in accordance with paragraph (d) of this section to have that adjustment, that decision, or a settlement agreement described in section 6224(c)(2) with respect to the partnership taxable year to which the adjustment relates apply to that partner. If the partner does not make an election in accordance with paragraph (d) of this section, the partnership items of the partner for the partnership taxable year to which the proceeding relates shall be treated as having become nonpartnership items as of the day on which the Internal Revenue Service mails the partner the FPAA.

(c) *Proceeding still going on.* If at the time the Internal Revenue Service

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mails the partner an FPAA, paragraphs (b)(1) and (2) of this section do not apply, the partner shall be a party to the proceeding unless the partner elects, in accordance with paragraph (d) of this section, to have—

(1) A settlement agreement described in section 6224(c)(2) with respect to the partnership taxable year to which the proceeding relates apply to the partner; or

(2) The partnership items of the partner for the partnership taxable year to which the proceeding relates treated as having become nonpartnership items as of the day on which the Internal Revenue Service mails the partner the FPAA.

(d) *Election*—(1) *In general*. The election described in paragraph (b) or (c) of this section shall be made in the manner prescribed in this paragraph (d). The election shall apply to all partnership items for the partnership taxable year to which the election relates.

(2) *Time and manner of making election*. The election shall be made by filing a statement with the Internal Revenue Service office mailing the FPAA within 45 days after the date on which the FPAA was mailed to the partner making the election.

(3) *Contents of statement*. The statement shall—

(i) Be clearly identified as an election under section 6223(e)(2) or (3);

(ii) Specify the election being made (that is, application of final partnership administrative adjustment, court decision, consistent settlement agreement, or nonpartnership item treatment);

(iii) Identify the partner making the election and the partnership by name, address, and taxpayer identification number;

(iv) Specify the partnership taxable year to which the election relates; and

(v) Be signed by the partner making the election.

(e) *Effective date*. This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6223(e)-2T contained in 26 CFR part 1, revised April 1, 2001.

[T.D. 8965, 66 FR 50550, Oct. 4, 2001]

§ 301.6223(f)-1 Duplicate copy of final partnership administrative adjustment.

(a) *In general*. Section 6223(f) does not prohibit the Internal Revenue Service from issuing a duplicate copy of the notice of final partnership administrative adjustment (for example, in the event the original notice is lost).

(b) *Effective date*. This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6223(f)-1T contained in 26 CFR part 1, revised April 1, 2001.

[T.D. 8965, 66 FR 50550, Oct. 4, 2001]

§ 301.6223(g)-1 Responsibilities of the tax matters partner.

(a) *Notices described in section 6223(a)*—

(1) *Notice of beginning of proceeding*. Except as otherwise provided in § 301.6223(a)-2, the tax matters partner shall, within 75 days after the Internal Revenue Service mails the notice specified in section 6223(a)(1), forward a copy of that notice to each partner not entitled to notice from the Internal Revenue Service under section 6223. See § 301.6230(e)-1 for information to be furnished to the Internal Revenue Service.

(2) *Notice of final partnership administrative adjustment*. The tax matters partner shall, within 60 days after the Internal Revenue Service mails the notice specified in section 6223(a)(2), forward a copy of that notice to each partner not entitled to notice from the Internal Revenue Service under section 6223.

(3) *Requirement inapplicable in certain cases*. The tax matters partner is not required to send notice to a partner if—

(i) Before the expiration of the applicable 75-day or 60-day period the partnership items of that partner have become nonpartnership items (for example, by settlement);

(ii) That partner is an indirect partner and has not been identified to the tax matters partner at least 30 days before the tax matters partner is required to send such notice;

(iii) That partner is treated as a partner solely by virtue of § 301.6231(a)(2)-1;

(iv) That partner was a member of a notice group as of the date on which